IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 128 of 1982
with
CROSS OBJECTION (STAMP) No.39 of 2007 /
CROSS OBJECTION No.37 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
MANIBEN BHIKHABHAI CHAVDA & 2 - Defendant(s)

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Appearance :
MR VIBHUTINANAVATI ON BEHALF OF MR PV NANAVATI for Appellant(s) : 1,
MS SEJAL SUTARIA ON BEHLAF OF MR VH DESAI for Respondent No.1,
NOTICE UNSERVED for Defendant(s) : 2,
None for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/06/2007

ORAL JUDGMENT

1. Mr.Vibhuti Nanavati, learned counsel for the appellant and Ms.Sejal Sutaria, under the authority of Mr.V.H. Desai, learned counsel for the respondent No.1 submits

that after the papers were withdrawn from the office of Mr.H.G. Shah, learned counsel, the same were given to Mr.V.H. Desai, learned counsel, but after some time, the said papers were withdrawn from the office of Mr.V.H. Desai, with no further instructions, she says that in the set of the circumstances, she is unable to appear for the respondent No.1.

2. In the present matter, certain Cross Objections were filed but as none appears to press the Cross Objections, Cross Objections (Stamp) No.39 of 2007 / Cross Objection No.37 of 2007 filed by the respondent No.3 are dismissed for want of prosecution.

3. The appellant – Insurance Company, being aggrieved by the impugned Judgment and Award dtd.12/11/1981 made by the learned Motor Accident Claims Tribunal (Main), Mehsana in Motor Accident Claim Petition No.430 of 1980, is before this Court with the submission that the learned tribunal was unjustified in making the award against the interest of the Insurance Company, when specific case of the Insurance Company was that it had not undertaken the liability, in case of injury or death of a person loading or unloading the goods in the vehicle. Mr.Nanavati, learned counsel for the appellant submits that in view of

the statements recorded by the tribunal and the submissions made by the Insurance Company, the impugned Judgement and Award made against the appellant – Insurance Company deserve to be set aside.

4. The learned tribunal, in para 15 of its Judgment and Award has observed that the Insurance Company had specifically undertaken the liability to indemnify the insured for death or physical injury to the driver, cleaner or conductor or person employed in loading or unloading tractor and trailer for any liability under the common law. The tribunal has also observed that the Endorsement No.16 would clearly provide that persons employed in loading and unloading are also covered in the risk covered by the Insurance Company. As the evidence on the records shows that the Insurance Company has covered the risk of the persons employed for the purposes of loading an unloading, in the opinion of this Court, no fault can be found with the impugned Judgment and Award made by the learned tribunal.

5. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

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